

STATE OF MICHIGAN
COURT OF APPEALS

KINGSLEY MANOR CONDOMINIUM
ASSOCIATION, a/k/a KINGSLEY MANOR
CONDOMINIUM,

Plaintiff-Appellant,

v

DAVID DERDERIAN,

Defendant-Appellee,

and

K. A. DEVELOPMENT, INC. and STATE OF
MICHIGAN, DEPARTMENT OF TREASURY,

Defendants – Not Participating.

Before: Markey, P.J., and Cavanagh and Saad, JJ.

MEMORANDUM.

Plaintiff appeals as of right the February 6, 2002, final order denying its motion for attorney fees. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Beginning in June 1998, defendant withheld condominium assessments for a unit that he owned. Plaintiff brought this action to foreclose a lien and collect the assessments, and defendant filed a counterclaim. The parties reached a stipulated judgment that defendant would pay the amounts owed in assessments into a trust account to be used to repair his unit and certain common areas. The trial court denied the motion for attorney fees, relying on *Newport West Condominium Ass'n v Veniar*, 134 Mich App 1; 350 NW2d 818 (1984).

The condominium act was recently amended to make the recovery of costs and attorney fees mandatory. MCL 559.206(b) now states:

(b) In a proceeding arising because of an alleged default by a co-owner, the association of co-owners or the co-owner, if successful, shall recover the costs

of the proceeding and reasonable attorney fees, as determined by the court, to the extent the condominium documents expressly so provide.

Plaintiff's by-laws provide that in a default proceeding, the association, if successful, shall be entitled to recover the costs of the proceeding and reasonable attorney fees determined by the court.

An owner of a condominium unit is required to comply with association bylaws, rules, and regulations promulgated under the condominium act. MCL 559.165. The remedy for violations by the association is a legal action, and not the withholding of fees. *Newport West, supra*, 13. A co-owner may not assert in an answer or setoff to a complaint for non-payment of assessments the fact that the association has not provided services or management. *Id.*; MCL 559.239.

Defendant had no defense for the non-payment of the assessments, yet he obtained the relief he sought. In return for the payment into trust of his assessment, he received a judgment requiring plaintiff to expend an amount in excess of the assessment for the benefit of defendant's unit. Plaintiff was not successful, and the court did not err in denying attorney fees.

Affirmed.

/s/ Jane E. Markey
/s/ Mark J. Cavanagh
/s/ Henry William Saad